

Message Text

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TO AMEMBASSY NASSAU

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EXDIS

E.O. 11652: GDS

TAGS: PLOS, PBOR, BF

SUBJECT: US-BAHAMAS MARITIME ISSUES

REFS: (A) NASSAU 1508 (B) STATE 248298 (C) NASSAU 1637

(D) NASSAU 1647 (E) STATE 280937

1. DEPT. APPRECIATES RECENT CABLES FROM EMBASSY CONCERNING GCOB THINKING ON ARCHIPELAGO DECLARATION AND MARITIME BOUNDARY ISSUES. WITHOUT ATTEMPTING TO ANSWER ALL OF THE QUESTIONS POSED IN REFTELS, THIS CABLE OFFERS A PARTIAL RESPONSE TO POINTS RAISED BY EMBASSY REGARDING ADVERSE CONSEQUENCES OF UNILATERAL DECLARATION OF ARCHIPELAGO BY GCOB. IT ALSO SEEKS TO SHOW FOR EMBASSY INFORMATION HOW POSSIBLE GCOB ACTIONS WOULD RELATE TO BOUNDARY ISSUES, HOW USG ACTIONS RELATE TO BOUNDARY ISSUES, AND SETS FORTH PRE-LIMINARY CONSIDERATIONS ON BOUNDARY QUESTIONS.
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2. ARCHIPELAGO. OUR VIEWS ON UNILATERAL ASSERTION OF ARCHIPELAGO BY GCOB CAN BE SUMMARIZED AS FOLLOWS: USG AND GCOB ARE IN BASIC AGREEMENT ON LOS ARTICLES REGARDING ARCHIPELAGO CONCEPT BUT USG OPPOSES RECOGNITION OF

UNILATERALLY DECLARED ARCHIPELAGO. SUCH RECOGNITION WOULD REMOVE A MAJOR INCENTIVE FOR ARCHIPELAGIC STATES ACTIVELY TO SEEK A COMPREHENSIVE LOS TREATY, CONCLUSION OF WHICH IS A MAJOR U.S. OBJECTIVE. RECOGNITION OF UNILATERALLY DECLARED ARCHIPELAGOS WOULD NOT ASSURE THE U.S. ADEQUATE NATIONAL SECURITY AND NAVIGATION SAFEGUARDS AND THE PRICE PAID COULD WELL ESCALATE OVER TIME. BILATERAL RECOGNITION OF BAHAMIAN ARCHIPELAGO WOULD DESTROY OUR POSITION OF REFUSING TO RECOGNIZE, OUTSIDE AN LOS TREATY, OTHER ARCHIPELAGOS, ESPECIALLY INDONESIA, WHICH COVER A VAST EXPANSE OF HIGH SEAS. EVEN IF AN ARGUABLY SATISFACTORY ARRANGEMENT COULD BE REACHED BILATERALLY WITH BAHAMAS, OTHER ARCHIPELAGO CLAIMANTS WOULD NOT NECESSARILY AGREE TO THE SAME CONDITIONS AND EVEN THE BAHAMAS ARRANGEMENTS MIGHT NOT WITHSTAND THE TEST OF TIME.

3. GIVEN THE FACT THAT USG WILL NOT ACCEPT ARCHIPELAGO CONCEPT OTHER THAN AS PART OF OVERALL LOS TREATY, SITUATION IS MORE DIFFICULT IF GCOB HAS IN FACT CONCLUDED THAT LOS CONFERENCE HAS FAILED OR IS DOOMED TO FAILURE. FYI. WE ARE AWARE OF EMBASSY VIEW THAT GCOB MAY LINK ARCHIPELAGO AND MILITARY FACILITIES QUESTION. WE ARE NOT NOW IN POSITION TO INDICATE SPECIFIC NATURE OF U.S. RESPONSE (BEYOND FACT THAT WE WILL NOT ACCEPT ARCHIPELAGO CLAIM) SHOULD GCOB UNILATERALLY DECLARE ARCHIPELAGO AND DEMAND RECOGNITION OF IT AS PRICE FOR CONTINUED USE OF BASES. END FYI. HOWEVER, WE CAN MAKE REASONABLE ARGUMENT TO GCOB THAT CONCLUDING LOS CONFERENCE TO BE FAILURE IS NOT JUSTIFIED AT THIS TIME, PARTICULARLY WITH ADDITIONAL SESSION SCHEDULED FOR NEXT SPRING.

4. WE UNDERSTAND ADDERLEY HAS LINKED GCOB NEED TO ACT UNILATERALLY NOW, INCLUDING POSSIBLE ARCHIPELAGO DECLARATION, TO EXTENSION OF U.S. FISHERIES JURISDICTION RATHER THAN TO LOS CONSIDERATIONS. DECLARATION OF CONFIDENTIAL

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ARCHIPELAGO WOULD NOT REALLY RESPOND TO U.S. EXTENSION OF FISHERIES JURISDICTION (NOR FOR THAT MATTER TO QUESTION OF CONTINENTAL SHELF BOUNDARIES REFERRED TO IN REF A). ARCHIPELAGO DECLARATION WOULD CREATE AREA OF ARCHIPELAGIC WATERS INSIDE ARCHIPELAGIC BASELINES BUT WOULD NOT INCLUDE AREAS OF POTENTIAL GCOB OFFSHORE JURISDICTION THAT MIGHT BE AFFECTED BY THE U.S. EXTENDED FISHERY ZONE. EVEN IF GCOB DECLARED AN ARCHIPELAGO TO HOLD BACK EXTENDED U.S. FISHERY JURISDICTION, SOME SORT OF EXTENDED JURISDICTION BEYOND ARCHIPELAGIC BASELINES STILL WOULD BE NECESSARY IF ONE FOLLOWS GCOB LOGIC. THUS, IF GCOB RAISES QUESTION OF ARCHIPELAGO DECLARATION IN RELATION TO U.S. EXTENSION OF JURISDICTION, YOU COULD ADD TO GENERAL POINTS SET FORTH IN PARA 3, SPECIFIC POINT THAT ARCHIPELAGO DECLARA-

TION ITSELF WOULD NOT BE A MEASURE THAT WOULD EXTEND GCOB JURISDICTION INTO AREAS POTENTIALLY IN DISPUTE AS A RESULT OF EXTENSION OF U.S. FISHERIES JURISDICTION.

5. FYI. WE WOULD OF COURSE PREFER THAT GCOB TAKE NO UNILATERAL ACTION AT THIS TIME. HOWEVER, IF GCOB BELIEVES IT MUST RESPOND TO U.S. ACTION BY EXTENDING ITS JURISDICTION, WE BELIEVE A FISHERY CONSERVATION ZONE COMPARABLE TO THAT OF U.S. IS THE STEP THAT ADEQUATELY AND MOST DIRECTLY PROTECTS GCOB CONCERNS. IN THIS REGARD, WE WOULD HOPE THAT GCOB CLEARLY UNDERSTANDS THAT THERE IS NO NEED TO FEEL THREATENED BY U.S. FISHERY ZONE OR TO FEEL COMPELLED TO ACT TO "HOLD BACK" U.S. CLAIMS, SINCE WE DO NOT INTEND TO IMPLEMENT OUR ZONE SO AS TO "ENVELOP" THE BAHAMAS. IF GCOB IS DETERMINED TO ACT, IT IS ALSO IMPORTANT THAT THEY UNDERSTAND DISTINCTION BETWEEN FISHERY CONSERVATION ZONE AND FULL ECONOMIC ZONE. USG IS NOT PREPARED AT THIS TIME TO RECOGNIZE JURISDICTION OVER ACTIVITIES OTHER THAN FISHING. END FYI.

6. BOUNDARIES: THERE FOLLOWS ALSO FOR EMBASSY INFO AND COMMENT OUR PRELIMINARY VIEWS ON BOUNDARY ISSUES. OUR THINKING ENCOMPASSES THREE SETS OF CONSIDERATIONS: (A) HOW AND WHEN ISSUES OF EVENTUAL MARITIME BOUNDARIES COME UP; (B) OUR GENERAL APPROACH TOWARD RESOLUTION OF THESE ISSUES AND (C) THE SUBSTANCE OF AN INITIAL BOUNDARY POSITION.

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7. HOW AND WHEN BOUNDARY ISSUES ARISE: THE QUESTION OF EVENTUAL MARITIME BOUNDARIES BETWEEN U.S. AND GCOB IS POSED BY THE EXTENSION OF U.S. FISHERIES JURISDICTION, WHETHER OR NOT THE GCOB ALSO EXTENDS ITS JURISDICTION. IF THE GCOB DOES NOT ACT BEFORE MARCH 1 THE ISSUE ARISES AS TO WHERE THE U.S. WOULD ENFORCE ITS JURISDICTION IN AREAS BETWEEN THE U.S. AND THE BAHAMAS. IN THIS EVENT, WE WOULD BE PREPARED TO DISCUSS WITH GCOB PRIOR TO MARCH 1 LIMITS OF USG ENFORCEMENT OF ITS FISHERIES JURISDICTION AS OF MARCH 1. WE WOULD SEEK AGREED APPROACH IN AREAS OF POTENTIAL DISPUTE SO AS TO AVOID POSSIBLE CONFLICT AND TO AVOID PREJUDICE TO MORE FORMAL BOUNDARY AGREEMENT IN FUTURE. IF GCOB DOES MOVE TO EXTEND ITS OFF-SHORE JURISDICTION PRIOR TO MARCH 1, WHICH APPEARS MORE LIKELY BASED ON INFORMATION CONTAINED IN REF E, THERE WILL NEED TO BE NEGOTIATIONS LOOKING TOWARD FORMAL BOUNDARY AGREEMENT. WE ARE PREPARED TO PURSUE WITH GCOB SUCH NEGOTIATIONS BUT DOUBT THEY COULD RESULT IN AGREEMENT BEING IN PLACE BY MARCH 1. WE WOULD CONSIDER POSSIBILITY OF INTERIM ARRANGEMENTS, AT LEAST ON ENFORCEMENT, FOR PERIOD UNTIL FORMAL AGREEMENT CAN BE CONCLUDED.

8. GENERAL APPROACH: THE POLITICAL CONTEXT IN WHICH

DISCUSSION ON BOUNDARY MATTERS WITH GCOB TAKES PLACE WILL BE VERY IMPORTANT TO SUCCESS OF THOSE DISCUSSIONS. IT IS OUR VIEW THAT RESOLUTION OF BOUNDARY QUESTION CAN BEST BE

PURSUED BY TREATING IT AS AN INDIVIDUAL PROBLEM AND ONE NOT TO BE RESOLVED AS PART OF "PACKAGE" WITH OTHER ISSUES, E.G. ARCHIPELAGO AND/OR MILITARY FACILITIES THOUGH WE RECOGNIZE THAT GCOB MIGHT PREFER LATTER APPROACH FOR POLITICAL REASONS. MORE SPECIFICALLY, WE BELIEVE THERE IS NO SUBSTANTIVE RELATIONSHIP BETWEEN BOUNDARY QUESTIONS AND ARCHIPELAGO CONCEPT EXCEPT IN TERMS OF BASE POINTS FROM WHICH EXTENDED JURISDICTION MIGHT BE MEASURED AS NOTED IN PARAGRAPH 9 BELOW. HOWEVER, IT IS APPARENT THAT THERE EXISTS A POSITIVE CORRELATION (FROM GCOB POINT OF VIEW) BETWEEN THE ARCHIPELAGO QUESTION AND RESOLUTION OF DELIMITATION LINES WITH CUBA IN THE GRAND BAHAMAS BANK AREA. IT WOULD BE OUR INTENTION TO AVOID ANY LINKAGE
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BETWEEN BOUNDARY DISCUSSIONS AND RECOGNITION OF GCOB ARCHIPELAGO EITHER DIRECTLY OR AS INDIRECT TECHNICAL MATTER.

9. SUBSTANCE OF U.S. BOUNDARY POSITION--INITIAL VIEWS:
--THE AREA OF EVENTUAL MARITIME BOUNDARIES WITH THE GCOB CAN BE DIVIDED INTO TWO PARTS, BASED ON DIFFERENT SETS OF CONSIDERATION: THE STRAITS OF FLORIDA AND THE BLAKE PLATEAU. IN THE STRAITS OF FLORIDA, DEPT'S INITIAL VIEW IS THAT WE NEED NOT ENCOUNTER OVERWHELMING PROBLEMS WITH THE GCOB IN DEVELOPING AN AGREED APPROACH--SHORT-TERM OR LONG-TERM--FOR THIS AREA. OUR ASSUMPTION IS THAT THE POSITION OF BOTH SIDES WOULD BE BASED ON THE PRINCIPLE OF EQUIDISTANCE, THEREBY EMPLOYING A MEDIAN LINE APPROACH TO EITHER SHORT-TERM ENFORCEMENT ARRANGEMENTS OR TO A FORMAL BOUNDARY SETTLEMENT. POSSIBLE PROBLEMS COULD EMERGE CONCERNING THE BASE POINTS FROM WHICH OFFSHORE JURISDICTION IS MEASURED, SINCE THEY OFFSET LOCATION OF THE MEDIAN LINE. SPECIFICALLY, THERE COULD BE DISAGREEMENT OVER WHETHER CERTAIN LOW TIDE ELEVATIONS (AREAS ABOVE WATER ONLY AT LOW TIDE) COULD BE USED AS BASEPOINTS FOR DETERMINING THE MEDIAN LINE. THERE COULD ALSO BE DISAGREEMENT (A MORE SERIOUS ONE) IF THE GCOB PRESSED FOR USE OF POINTS ON ARCHIPELAGIC BASELINES AS BASEPOINTS FOR DETERMINING THE MEDIAN LINE. ON THIS LATTER POINT, WE OPPOSE IN THE LOS CONTEXT LINKING THE USE OF ARCHIPELAGIC BASELINES WITH THE DELIMITATION OF MARITIME BOUNDARIES. TO DATE, THIS POINT HAS NOT COME UP IN LOS AS AN ISSUE BETWEEN U.S. AND GCOB. IN ACTUAL FACT, THERE WOULD BE LITTLE PRACTICAL ADVANTAGE IN TERMS OF -AREA TO BE GAINED BY GCOB VIS-A-VIS THE U.S. IN USING ARCHIPELAGIC BASEPOINTS TO DETERMINE A MEDIAN LINE. WE BELIEVE THAT BASEPOINTS PROBLEMS CAN BE OVERCOME AND THAT AGREED INTERIM APPROACH AND/OR NEGOTIATED BOUNDARY

IN STRAITS OF FLORIDA IS POSSIBLE IN THE NEAR TERM.

--IN BLAKE PLATEAU AREA, WE FORESEE THE POSSIBILITY OF A SIGNIFICANT DIFFERENCE OF VIEWS. IT IS POSSIBLE THAT BOTH COUNTRIES COULD PUT FORWARD CLAIMS BASED ON CONCEPT THAT BLAKE PLATEAU OR SUBSTANTIAL PART THEREOF IS NATURAL PROLONGATION OF THEIR CONTINENTAL SHELVES. EACH SIDE COULD FIND SOME JUSTIFICATION IN INTERNATIONAL LAW AND
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PRACTICE FOR TAKING THAT POSITION. WE ARE UNDERTAKING A DETAILED ANALYSIS TO DETERMINE OUR OWN POSITION REGARDING THE NATURAL PROLONGATION ARGUMENT. ONE IMPORTANT FACTOR WE WILL HAVE TO CONSIDER IS FACT THAT WE ADVOCATE A POSITION INCORPORATING NATURAL PROLONGATION IN OUR DIFFICULT NEGOTIATIONS WITH CANADA ON THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA, WHERE CANADA ADVOCATES EQUIDISTANCE. IF WE ADOPT AN EQUIDISTANCE APPROACH RATHER THAN A NATURAL PROLONGATION APPROACH FOR THE BLAKE PLATEAU, IT COULD COMPLICATE OUR EFFORTS TO NEGOTIATE OR ADJUDICATE OUR GULF OF MAINE BOUNDARY POSITION WITH CANADA. ON THE OTHER HAND, IF WE ADOPT A NATURAL PROLONGATION APPROACH IN THE BLAKE PLATEAU AREA, IT IS EVIDENT THAT ANY NEGOTIATIONS WITH THE GCOB WOULD BE LONG AND CONTENTIOUS AND WE WOULD RUN THE RISK OF A PUBLIC AND NATIONALISTIC DISPUTE WITH GCOB ON THE BOUNDARY ISSUE.

10. BASED ON ABOVE ANALYSIS DEPT IS CONSIDERING, ON A PRELIMINARY BASIS, THE IDEA OF WORKING OUT A BOUNDARY ARRANGEMENT IN THE STRAITS OF FLORIDA IN THE NEAR FUTURE AND DEFERRING NEGOTIATION OF A BOUNDARY ARRANGEMENT IN THE BLAKE PLATEAU. AS A FISHERY RESOURCE MATTER, SUCH AN APPROACH WOULD BE JUSTIFIED SINCE MOST, IF NOT ALL, FISHING EFFORT IS CONCENTRATED IN FLORIDA STRAITS AREA RATHER THAN IN THE DEEPER WATERS OF BLAKE PLATEAU. HOWEVER, SUCH AN APPROACH IN THE FLORIDA STRAITS BASED ON EQUIDISTANCE POSSIBLY IS PREJUDICIAL TO ANY CLAIM BASED ON NATURAL PROLONGATION THE USG MIGHT WANT TO MAKE ON THE BLAKE PLATEAU.

11. WITHOUT DISCUSSION OF BOUNDARY MATTERS WITH GCOB, DEPT WOULD APPRECIATE ADDITIONAL EMBASSY VIEWS ON DEPT'S INITIAL THINKING ON SUBSTANCE OF USG POSITION AND APPROACH. DEPT WOULD ALSO APPRECIATE EMBASSY CONCERNING THE TIMING OF ANY APPROACH TO THE GCOB ON THE BOUNDARY ISSUE. ROBINSON

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